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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted]33

HULBERT T. E. BEARDSLEY and
H. T. E. BEARDSLEY, INC.,
Petitioners,

v.

CONTINENTAL CASUALTY COMPANY,
Respondent.

PETITIONERS' REPLY BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 1046

HULBERT T. E. BEARDSLEY and H. T. E. BEARDSLEY, INC.,

Petitioners,

v.

CONTINENTAL CASUALTY COMPANY,

Respondent.

PETITIONERS' REPLY BRIEF

The respondent's brief in opposition to the petition for a writ of certiorari calls for a short reply inasmuch as it seeks to detract from the importance of the case by erroneous statements which have no support. Those misleading matters we cannot ignore.

AUTHORSHIP. Beardsley's authorship and the novelty of his writing were corroborated (R. 131a, 146a, 170a, 177a, 188a). Reference to R311a (Resp's. brief, p. 2) is to a letter, which appears to be an admission that Beardsley was not the sole originator, but is in fact a draft tendered for Beardsley's signature by a third party which Beardsley refused to sign (R. 311a, cf. R. 236a, 240a). The Court of Appeals found it unnecessary to rule on authorship because of its erroneous interpretation of the law of limited publication and its improper application of a "stiff"(er) standard of infringement "in the fields of insurance and commerce" than to works in general (Petition, pp. 21, 23, 25).

COPYING. The District Court did not hold (as the respondent erroneously states at pp. 2 and 4 of its brief) that there was no copying. It merely held that respondent had not infringed petitioner's 1939 copyright despite "striking similarity of language" because of the Court's concept of the applicable law (R. 308a, 311a).

The Court of Appeals did not find an absence of copying (as the respondent erroneously states at p. 4 of its brief), but rather that respondent had not infringed. It found, at least tacitly, that respondent had copied petitioner's language, saying:

> "The evidence here shows that Continental in so far as it has used the language of Beardsley's forms has done so only as incidental to its use of the underlying idea. * * * In so doing it has not infringed." (Petition, p. 25)

Direct and indirect copying is borne out by the evidence (Petition pp. 7, 8; Record 37a, 53a, 196a, 197a, 204a, 211a, 214a, 222a, 227a, 228a, 234a, 248a, 268a-275a, 280a-288a).

USE OF IDEA ONLY. Petitioners are not seeking and have never sought exclusive control of the idea of a blanket bond for the replacement of lost securities (as respondent erroneously states at pages 3, 5 and 6 of its brief). The District Court agreed that petitioner "makes no claim to a copyright in the plan" (R. 304) and the Court of Appeals confirmed that petitioner's "claims as to infringements were not deceitfully and unreasonably made" (Pet., p. 29). No Court has ever held that bare ideas are the subject of copyright; it is the language expressing an idea that has been afforded protection. The Courts below have denied such protection in the case at bar.

IMPORTANCE OF THE CASE. Summing up its claim that no public interest is involved, respondent makes a series of

mis-statements. Typical of these is the erroneous claim that petitioner seeks "a rule for finding infringement specially set up for him". (Conclusion, Resp.'s brief, p. 6). Petitioners, far from asking special treatment, seek the same protection as is granted to all authors by the Copyright Act, i.e., protection against the copying of their writings (Petition, pp. 10-13).

Contrary to respondent's contentions, the principles involved in this matter (Petition, pp. 2, 3, 10-18) affect the rights of authors and users in the whole broad field of writing and warrant a grant of certiorari.

Respectfully submitted,

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